



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

November 3, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Alicia and Daniel DeGowin v. County of Los Angeles**
Torrance Superior Court Case No. YC 044 671

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$600,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Public Works.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosures

MEMORANDUM

October 27, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: GREG HOULE
Houle and Houle

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: Alicia and Daniel DeGowin v. County of Los Angeles
Torrance Superior Court Case No. YC 044671

DATE OF
INCIDENT: November 23, 2001

AUTHORITY
REQUESTED: \$600,000

COUNTY
DEPARTMENT: Department of Public Works

CLAIMS BOARD ACTION:

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

Chief Administrative Office
ROCKY A. ARMFIELD

County Counsel
LLOYD W. PELLMAN

Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$600,000, the lawsuit for dangerous condition of public property and inverse condemnation, filed by Alicia and Daniel DeGowin, whose home was damaged by sewage that flowed into their home from a sewer line maintained by the County.

LEGAL PRINCIPLES

A public entity is liable for injuries caused by a dangerous condition of its property if the property was in a dangerous condition at the time of the injury, the injury was caused by the dangerous condition, the dangerous condition created a foreseeable risk of the type of injury that was suffered, and the public entity had actual or constructive notice of the dangerous condition.

A public entity is liable under the law of inverse condemnation for damage caused to a citizen's property, when the damage was caused by a public improvement as deliberately designed, and constructed by the public entity, whether or not the damage was foreseeable. Inverse condemnation liability can be based on an improper maintenance plan of the public entity. A prevailing plaintiff in an inverse condemnation action is entitled to an award of reasonable attorney's fees.

SUMMARY OF FACTS

On November 23, 2001, in the unincorporated Palos Verdes peninsula area, a County maintained sewer line flooded through the plumbing and into the home of Alicia and Daniel DeGowin. The sewer line had become clogged by tree roots in the neighborhood, which caused the sewage to travel into the lateral sewer line on the DeGowin's property, and into their home.

The sewage spread throughout the first floor of the home and caused extensive damage. Alicia and Daniel DeGowin had to move out of their home for nine months, while the repairs were being made to their home.

The County had a maintenance plan in place in the neighborhood that included a root abatement program consisting of periodic chemical foaming, and clearing of the sewer line. However, the root abatement program did not extend to the sewer line in front of Alicia and Daniel DeGowin's home because tree roots had not been a problem at that location. Since the incident, the root abatement program was extended to the sewer line in front of their home.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Property damage repair	\$ 140,000
Diminution in property value	\$ 400,000
Pre-judgment interest	\$ 80,000
Emotional distress	\$ 200,000
Living expenses (9 months out of home)	\$ 40,000
Attorney's fees and costs	<u>\$ 300,000</u>
Total	<u>\$1,160,000</u>

The proposed settlement calls for the County to pay Daniel and Alicia DeGowin \$600,000 for all of their claims for damages, costs, and attorney's fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this action are attorney's fees of \$42,720 and \$7,075 in costs.

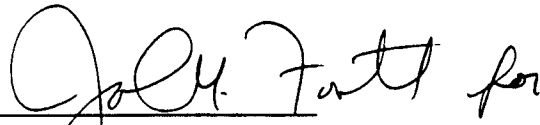
EVALUATION

This is a case of disputed liability. The dangerous condition allegation does not pose a threat of liability, as the County did not have actual or constructive notice of the tree roots in the sewer line. However, a jury could find that the County's sewer maintenance plan was defective in that it did not extend to the sewer line in front of Alicia and Daniel DeGowin's home. If the jury finds the plan was defective, the County would be liable under the inverse condemnation cause of action.

A reasonable settlement at this time will avoid further litigation costs, and a jury verdict, along with attorney's fees, that could exceed the proposed settlement.

We join with our private counsel, Houle and Houle, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$600,000.

APPROVED:



GARY N. MILLER
Assistant County Counsel

RHG:scr

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

Facility: Mainline sewer within Eastvale Road in front of 26722 Eastvale Road in the unincorporated Palos Verdes peninsula area

Case Name: Alicia DeGowan vs. County of Los Angeles, et al.

Case No. YC044671

Page 1

RISK MANAGEMENT ISSUES:

	ISSUES
<input checked="" type="checkbox"/> Systems <input type="checkbox"/> Personnel	<p>The County may be liable in inverse condemnation if a public improvement, operating as intended, is a substantial factor in causing damage to private property.</p> <p>On November 23, 2001, sewage from the County maintained sewer line within Eastvale Road in unincorporated Palos Verdes peninsula area flooded the first floor of the residence at 26722 Eastvale Road. The flooding occurred as a result of a blockage in the main line sewer. The Department's Waterworks & Sewer Maintenance Division crew responded to the incident and hydroed the line to clear the blockage and restore flow.</p>

INVESTIGATIVE SUMMARY:

DATE	INVESTIGATION
November 23, 2001	Department receives service request regarding sewage backup problem at 26722 Eastvale Road. Crew arrives and observes wastewater level in manhole is high. Crew hydro's line and breaks down root stoppage returning mainline sewer flow to normal. Crew observes sewage flooding damage in residence at 26722 Eastvale Road.
May 24, 2002	Plaintiffs file a claim for damages with the County of Los Angeles Board of Supervisors.

CHRONOLOGY OF EVENTS

DATE	INVESTIGATIONS
1964	County Improvement (CI) No. 2291 Sanitary Sewers "Eastvale Road" was constructed in the unincorporated Palos Verdes Peninsula area by the County.
April 14, 1967	Building permit was issued to connect the sewer from the plaintiff's property. Permit does not indicate that a backflow valve was required.
June 26, 2001	The sewers were inspected as part of the Preventive Maintenance Program. At the time, observation of sewer flow conditions was normal.
October 2001	Plaintiffs purchase the property.
November 23, 2001	Blockage in mainline sewer causes wastewater to backup into plaintiff's home causing flooding of first floor.
November 23, 2001	Waterworks & Sewer Maintenance Division responds to service request regarding plumbing problem at plaintiff's home. Crew observes wastewater level high in manhole and hydro's the mainline to breakdown root stoppage and restore flow.
May 22, 2002	DeGowin's file claim with Board of Supervisors for damages.
September 20, 2002 to the present	Discovery, depositions, settlement negotiations between DeGowin's and County. Settlement agreement reached.

CORRECTIVE ACTIONS (PERSONNEL)

Personnel Involved	Status (Time of Event)	Current Status	Disciplinary Action Taken	Date Completion
None			All Department personnel performed their duties as outlined in the sewer maintenance procedures.	

CORRECTIVE ACTIONS (SYSTEMS):

System	Corrective Action	Date Completed
Mainline sewer within Eastvale Road in front of 26722 Eastvale Road in the unincorporated Palos Verdes peninsula area.	The blockage was attributed to roots entering the mainline sewer from a private house lateral. To minimize the occurrence of future blockages this section of mainline sewer will be placed on a 18 month periodic foaming program.	July 18, 2002.